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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,637	01/23/2002	Stephen L. Siegler	LAWR0021US	9426
24235	7590	06/23/2004	EXAMINER	
LEVINE & MANDELBAUM 444 MADISON AVENUE 35TH FLOOR NEW YORK, NY 10022			FLANDRO, RYAN M	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/055,637

Applicant(s)

SIEGLER ET AL.

Examiner

Ryan M Flandro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Objections***

2. Although not noted in the previous Office action, claims 2-6 and 8 are still objected to because of the following informalities (see Office action mailed 7/16/03):
  - a. Claims 2-6, and 8. The word "A" at the beginning of each claim should be changed to "The".
  - b. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

3. Again, this application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1, 2, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reading et al (GB 2247095 A) (Reading) in view of ADA Standards for Accessible Design (1994 Revision) (hereinafter referred to as "ADA").

a. Claim 1. Reading shows and discloses a pedestrian traffic control device comprising a hollow, upright, one piece, post 2 having an open upper end B and a lower end C; at least one slot A in the post 2 between its ends B,C, the slot A being spaced from both ends B,C of the post 2; a cassette located within the post 2 (see page 7 lines 5-10) and between its ends B,C, the cassette incorporating a tape 4 wound on a spool (see page 7 lines 5-11), the tape 4 being extendable from the cassette (see page 7 lines 10-14), through the slot A in the post 2, in a direction generally perpendicular to the axis of the post 2; the lower edge of the tape 4, when extended, being spaced from the upper end of the post 2 (see annotated figure 1 below), and means (page 7 lines 5-10) for holding the cassette within the post 2 (see generally annotated figure 1 below).

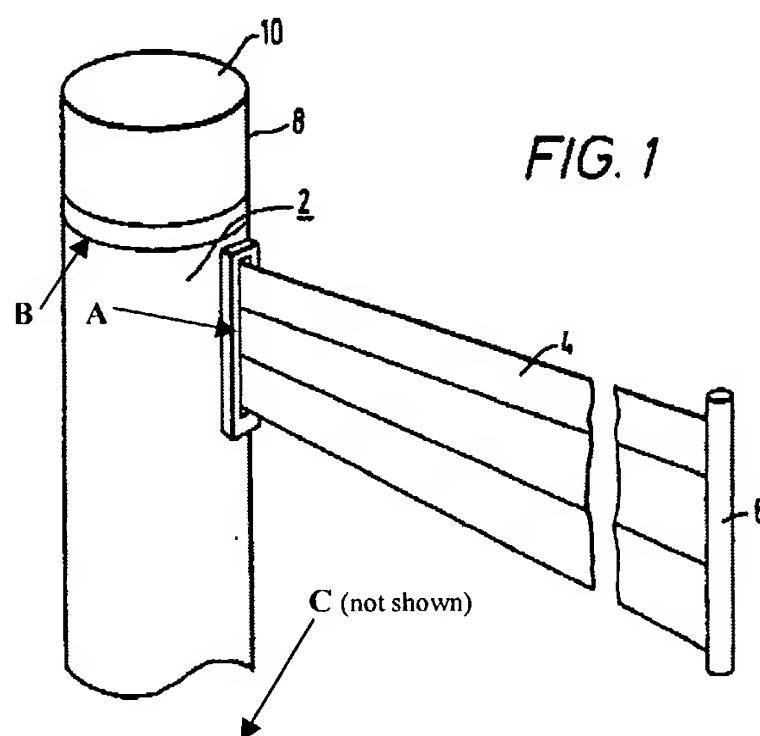
Reading does not explicitly show or disclose both the upper and lower edges of the tape 4, when extended, being spaced from the upper end of the post 2 *at least several inches*.

ADA, however, provides Federally mandated guidelines that "free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor" (see ADA 4.4.1 and figure 8(c)). Thus, the tape 4 in Reading is required by Federal law to be adjusted to a specific height. This can be accomplished by one of ordinary skill in the art by either (1) changing the overall height of the post 2 while leaving the tape 4 and tape slot A in the same position relative

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to the upper end of the post 2; or (2) adjusting the relative floor height of the tape 4 and tape slot A while leaving the height of the post 2 the same. Reading does not teach away from either configuration and either solution to the Federally mandated design standard would be obvious to one having ordinary skill in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange both the upper and lower edges of the tape of Reading, when extended, being spaced from the upper end of the post at least several inches since such an adjustment is one possible solution to those design standards required by the American's with Disabilities Act and since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70 (CCPA 1950) (holding that claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device).



b. Claim 2. Reading further shows the post 12 and cassette are both generally circular in cross-section, and the outer diameter of the cassette 22, along its entire axial length, is smaller than the internal diameter of the post 12 (see annotated figure 1 above and figure 2). As to the recitations that the cassette 22 can be inserted into the open upper end of the post 12 and moved to its location between the ends of the post 12, Reading meets these limitations but the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

c. Claim 3. Reading discloses all of the limitations recited in claim 3 except for the lower edge of the tape, when extended, being less than twenty-seven (27) inches above the floor supporting the post.

ADA, however, provides Federally mandated guidelines that "free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor" (see ADA 4.4.1 and figure 8(c)). Thus, the tape 4 in Reading is required by Federal law to be adjusted to that specific height. Moreover, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70 (CCPA 1950) (holding that claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device).

d. Claim 4. Reading further discloses means for supporting the cassette within the post 2 in the region of the slot in the post 1 (see page 7 lines 5-10).

e. Claim 6. Reading discloses all of the limitations recited in claim 6 except for the pedestrian control device explicitly having no tape-holding cassette occupying the upper end of the post. In view of ADA as applied to claim 1, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the relative floor height of the tape 4 and tape slot A while leaving the height of the post 2 the same since such an adjustment is one possible solution to the design standards required by the American's with Disabilities Act.

f. Claim 7. Reading, as applied above, also shows a pedestrian traffic control device, the device 10 including a hollow post 2 having an open upper end B and a slot A between and spaced from the post 2 ends B,C, the lower edge of the slot A being spaced from the upper end of the post 2 at least several inches, and a cassette incorporating a spool (not shown but see page 7 lines 5-10) on which a tape 4 is completely wound, the free end of the tape 4 being exposed, the method including the steps of inserting the cassette into the open end of the post 2, maneuvering the cassette along the length of the post 2 until the free end of the tape 4 is accessible through the slot A in the post 2; pulling the free end of the tape 4 through the slot A; and attaching a finger pull 6 to the free end of the tape 4 exposed outside the post 2, the pull 6 being sized large enough so that the free end of the tape 4, with pull 6 attached, cannot be retracted into the post 2 through the slot A (see annotated figure 1 above; pages 7-8).

Reading does not explicitly show or disclose both the upper and lower edges of the tape 4, when extended, being spaced from the upper end of the post 2 *at least several inches*.

ADA, however, provides Federally mandated guidelines that “free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor” (see ADA 4.4.1 and figure 8(c)). Thus, the tape 4 in Reading is required by Federal law to be adjusted to a specific height. This can be accomplished by one of ordinary skill in the art by either (1) changing the overall height of the post 2 while leaving the tape 4 and tape slot A in the same position relative to the upper end of the post 2; or (2) adjusting the relative floor height of the tape 4 and tape slot A while leaving the height of the post 2 the same. Reading does not teach away from either configuration and either solution to the Federally mandated design standard would be obvious to one having ordinary skill in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange both the upper and lower edges of the tape of Reading, when extended, being spaced from the upper end of the post at least several inches since such an adjustment is one possible solution to those design standards required by the American’s with Disabilities Act and since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70 (CCPA 1950) (holding that claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device).

g. Claim 8. Reading lastly discloses that the tape-carrying spool is spring biased (see page 7 lines 8-11) in a direction tending to wind the tape 4 on the spool, so that pulling



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the free end of the tape 4 through the post slot A adds tension to the spring (see annotated figure 1 above; pages 7-8).

### *Response to Arguments*

5. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection. Additionally, Applicant's arguments specifically directed to claims 7 and 8 and the method recited therein have been fully considered but they are not persuasive. The Examiner disagrees that Reading does not show or disclose the step of pulling the free end of the tape through the slot and thereafter attaching a finger pull to the free end of the tape exposed outside the post. Figure 1 and page 7 lines 6-12 can be read to teach these limitations. Figure 1 shows the grip device 6 being too large to be pushed through slot A and lines 6-12 recites the reel with the belt 4 thereon being inserted into the post 2. Only after such recitation is the grip device 6 mentioned as being attached to the end of the belt 4.

### *Conclusion*

6. Applicant's amendment adding limitations that *both the upper and lower edges of the slot or tape are spaced at least several inches from the upper end of the post* necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

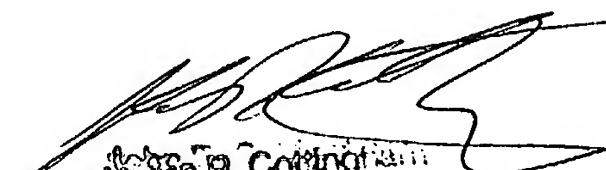
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan M Flandro whose telephone number is (703) 305-6952.

The examiner can normally be reached on 8:30am - 5:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMF  
June 15, 2004



John R. Corrigan  
Patent Examiner